



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) Nos. 27237 of 2019

and

W.M.P. (MD) No. 23527 of 2019

R.Meganathan,
S/o.Rajalingam,
Record Clerk,
Nilakottai Town Panchayat,
Nilakottai,
Dindigul District.

... Petitioner

Vs.

1. The District Collector,
Dindigul District,
Dindigul.

2. The Assistant Director of Town Panchayats,
Collectorate Campus,
Dindigul.

3. The Executive Officer,
Nilakkottai Town Panchayat,
Nilakkottai,
Dindigul District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari Mandamus calling for the records relating to the impugned order passed by the third respondent in Na.Ka.No.666-2/2019/Tha.A dated 27.11.2019 and quash the same as illegal and consequently direct the respondents to permit the petitioner to work as Record Clerk in the third respondent Town Panchayat with all service and attendant benefits.

For Petitioner	:	Mr.R.R.Kannan
For Respondents	:	Mr.N.Satheeshkumar Additional Government Pleader

O R D E R

The order of reversion dated 27.11.2019 is under challenge in the present Writ Petition.



2. The petitioner was appointed as Sanitary Worker, as per the resolution passed by the Town Panchayat on 02.11.2000. Thereafter, the third respondent has appointed the petitioner as Sanitary Supervisor on 23.08.2007. Subsequently, he was promoted to the post of Record Clerk, as per the resolution of the Town Panchayat held on 16.06.2008. The petitioner states that he is working as Record Clerk with effect from 16.06.2008 onwards.

3. The audit objection was raised for the financial year 2009-10 and the objection was raised regarding the promotion of the writ petitioner to the post of Record Clerk from the post of Sanitary Supervisor as there is no rule to grant such promotion. Accordingly, the third respondent has passed an order of reversion in proceedings dated 26.09.2012 and the said order was challenged by the writ petitioner in W.P. (MD) No. 13738 of 2012 and interim order was granted by this Court. With the benefit of interim order, the petitioner continued in the post of Record Clerk and this Court has passed the final order remanding the matter back to the Authorities for providing an opportunity to the writ petitioner to defend his case. Thus, after providing an opportunity and considering the explanation submitted by the writ petitioner, the impugned order of reversion has been passed which is now under challenge in the present Writ Petition.

4. The learned counsel for the petitioner mainly contended that as per the Tamil Nadu Town Panchayats (Establishment) Rules, 1988, the post of Record Clerk shall be filled by direct recruitment or by transfer from among menials paid from contingencies. When there is a provision to appoint the Record Clerk by way of transfer from among menials paid from contingencies and the petitioner was holding the regular post of Sanitary Supervisor, there is no error in the matter of grant of promotion to the writ petitioner from the post of Sanitary Supervisor to Record Clerk. It is further contended that the scale of pay for both the posts are identical and there is no loss to the Town Panchayat. This apart, the petitioner is already working for more than 19 years in the post of Record Clerk and therefore, the Writ Petition is to be considered.

5. The learned counsel for the respondents made a submissions that the Rule does not contemplate any such promotion from the post of Sanitary Supervisor to Record Clerk. The promotion was granted irregularly by passing a resolution by the Town Panchayat and therefore, the audit objection was raised by the Competent Authorities. Based on the audit objection, the order of reversion was passed in the year 2012 and by virtue of the interim order of stay, the petitioner was allowed to continue as Record Clerk. Therefore, the petitioner is not entitled to claim any benefit for



the period in which he served as Record Clerk based on the interim order of this Court. The learned counsel further contended that the Rule does not contemplate any such promotion from the post of Sanitary Supervisor to the post of Record Clerk as both of the posts are carrying identical scale of pay. When identical scale of pay is prescribed, the question of promotion would not arise at all. Thus, the very resolution passed by the Town Panchayat is irregular and in violation of Rules-in-force.

6. Considering the arguments, this Court is of the opinion that the Rule provides the method of recruitment for appointment to the post of Record Clerk. Accordingly, by direct recruitment or by transfer from among the menials paid from contingencies, the petitioner was not appointed to the post of Record Clerk. He was promoted to the post of Record Clerk from the post of Sanitary Supervisor. Further, he was not transferred from among menials paid from contingencies as he was a regular employee in the post of Sanitary Supervisor. Therefore, the petitioner has not satisfied the conditions for recruitment of appointment to the post of Record Clerk as per the Rules-in-force.

7. When the posts of Sanitary Supervisor and Record Clerk carry identical scale of pay, grant of promotion from the post of Sanitary Supervisor to Record Clerk does not arise at all. The promotion can be granted only to the higher post carrying higher scale of pay and not in respect of identical categories. Thus, both the recruitment for appointment to the post of Record Clerk as well as scale of pay fixed for the post of Record Clerk do not permit to grant of promotion from the category of Sanitary Supervisor, which is identical.

8. The learned counsel for the petitioner further made an attempt to refer the Tamil Nadu Town Panchayat Office Assistant and menials (Leave) Rules, 1988, wherein the Sweeper-cum-Scavenger has been prescribed. However, the said Rules have no application in respect of the regular employees as the Rules shall apply to all Record Clerks and menials paid from contingencies in employment of the Town Panchayat. When the Rules have no application, the reference cannot be made by the petitioner regarding the categories mentioned in the said Leave rules.

9. A perusal of the order of promotion reveals that the petitioner was regularly appointed as Sanitary Supervisor and the post of Record Clerk became vacant in the Town Panchayat. The Town Panchayat passed a resolution to promote the writ petitioner from the post of Sanitary Supervisor to Record Clerk. Such a resolution



is in violation of the recruitment Rules in force. Even, if a vacancy arises, such posts are to be filled up as per the method of recruitment contemplated under the Rules. When the method of recruitment does not contemplate the promotion from the post of Sanitary Supervisor, such promotion cannot be granted and audit objection has rightly been raised. Thus, there is no infirmity as such in respect of the objections raised by the audit party.

10. The Town Panchayat passed a resolution probably in order to favour the petitioner to accommodate him in the post of Record Clerk. Such order can never be approved by the Court as it is directly in violation of the recruitment Rules in force. But the Town Panchayat cannot pass such resolution which is in violation of the Act and Rules in force. The Authorities of the Town Panchayat are bound to raise objections in this regard or bring the irregularity to the knowledge of the District Collector, who is the Inspector of Town Panchayat under the Act. Therefore, all such actions are to be monitored properly in order to avoid irregularities and illegalities in the matter of appointments, promotions and dealing with the administrative affairs of Town Panchayat.

11. A perusal of the promotion order reveals that it was passed on extraneous consideration and in violation of the Rules. This being the factum established, this Court do not find any infirmity or perversity in respect of the order of reversion passed. The petitioner was allowed to continue in the post of Record Clerk by virtue of the interim order granted by this Court and such "litigious employment" cannot be a ground to consider the case of the writ petitioner for his continuance in the post of Record Clerk. Thus, the Writ Petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

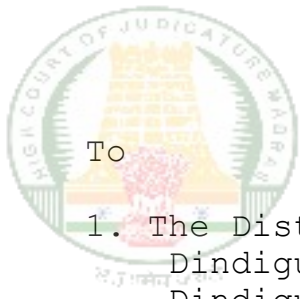
Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

vji



To

1. The District Collector,
Dindigul District,
Dindigul.

2. The Assistant Director of Town Panchayats,
Collectorate Campus,
Dindigul.

3. The Executive Officer,
Nilakkottai Town Panchayat,
Nilakkottai,
Dindigul District.

+1 CC to M/s.RR.KANNAN, Advocate (SR-13788[F] dated 23/03/2022)

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SMV(CO)
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